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AUG 28 2006

REMARKS

Claims 1-22 are currently pending in this application. By this amendment, applicant has amended claim 1. Support for the additional text added to claim 1 can be found throughout the specification, in particular at page 4, lines 3-14. Upon entry of the amendment, claims 1-22 will be pending and under examination.

**Rejection under 35 U.S.C. §102(e)**

Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 1-22 under 35 U.S.C. §102(e) as allegedly being anticipated by PGPUB 2004/126337 ("Singleton"). The examiner contends that Singleton discloses a composition containing a lipophilic sunscreen, a copolymer of sodium acryloyldimethyltaurate and one or more acryls, and an oil-absorbant. The examiner asserts that the Singleton composition contains 0.1 to about 50% and at least 10% of one or more lipophilic sunscreens (page 2) and notes that example 1 of the publication purports to disclose a sunscreen composition having an SPF of 45. The examiner further asserts that in the compositions in Singleton, examples of the oil-absorbing agents include silica, e.g., porous silicas, and fumed silica powders.

In response, but without conceding the correctness of the examiner's position, applicant has amended claim 1 above to focus the claim on the preferred embodiment of pre-treating the porous silica microspheres in the claimed compositions with water or aqueous solution to treat the surface of the microspheres and prevent absorption of oil/organic ingredients, in particular sunscreen actives. Claims 8-22 reflect this aspect of the invention by noting that the porous silica microspheres are part of the aqueous component that is added to the oil component thus forming the claimed emulsion composition. As noted in the specification at page 4, lines 3-14, adding the porous silica to the aqueous component prior to forming the emulsion composition has the same effect as pretreating the silica with water to produce the desired effect of preventing absorption of organic ingredients, which, for

sunscreen compositions in particular, could result in there being less sunscreen active material available for the desired effect of a sunscreen composition. Singleton does not teach or suggest pretreating any porous silica microspheres with water or aqueous component. In fact, as shown in Example 1, paragraph [0034], silica is "sprinkled into the emulsion" after formation of the emulsion, which is completely contrary to the claimed invention. Accordingly, Singleton does not anticipate the claimed invention under 35 U.S.C. §102(e) and applicant respectfully requests that the rejection be reconsidered and removed.

#### **Rejections under 35 U.S.C. §102(b)**

Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 1-5 under 35 U.S.C. §102(b) as allegedly being anticipated by EP 0679382. The examiner contends that the EP application discloses cosmetic compositions comprising porous silica spheres with a diameter of 1-50 microns and preferably 2-20 microns. The examiner notes in particular examples 12 and 15 of the EP application as allegedly disclosing compositions within the scope of claims 1-5 of the claimed invention.

In response, but without conceding the correctness of the examiner's position, applicant notes that claim 1 of the subject application has been amended to more clearly specify the claimed invention as one where the porous silica microspheres in the emulsion have been pretreated with water or with the aqueous component of the emulsion or added to the emulsion as part of the aqueous component. In contrast, the silica of the compositions disclosed in the EP application are said to be pretreated with N-lauroyl-L-lysine. The EP application does not teach or suggest the claimed invention and in fact teaches against the claimed invention. Accordingly, the EP application does not anticipate the claimed invention under 35 U.S.C. §102(b) and therefore applicant respectfully requests that the rejection of claims 1-5 be reconsidered and removed.

Applicant further respectfully requests the reconsideration and withdrawal of the rejection of claims 1-5 under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 6,696,049 ("Vatter"). The examiner contends that Vatter discloses a cosmetic composition comprising from about 0.1% to about 15% of crosslinked organosiloxane elastomer having an average particle size less than 20 microns, from about 10 to about 80% of a solvent for the crosslinked siloxane elastomer, optionally from 0 to about 50% of skin conditioning agent, and optionally from about 0 to about 95% water. The examiner further contends that Vatter discloses silicas, particularly silica ellipsoids and silica microspheres in the amount from about 1% to about 40%, more preferably from about 1% to about 25%, and most preferably 2% to about 10% by weight of the composition.

In response, but without conceding the correctness of the examiner's position, applicant notes that claim 1 of the subject application has been amended to more clearly specify the claimed invention as one where the porous silica microspheres in the emulsion have been pretreated with water or with the aqueous component of the emulsion or added to the emulsion as part of the aqueous component. In contrast, the silica of the compositions disclosed in Vatter is added to the oil phase of the emulsions disclosed therein before the oil phase is combined with the water phase (see, in particular, Example V, at Col. 27, lines 32-53) or is added after the emulsion composition is formed (see, in particular, Example IX-X, at Col. 30, lines 56-62). Vatter does not teach or suggest the claimed invention and, in fact, teaches against the claimed invention. Accordingly, Vatter does not anticipate the claimed invention under 35 U.S.C. §102(b) and therefore applicant respectfully requests that the rejection of claims 1-5 be reconsidered and removed.

#### **Rejection under 35 U.S.C. §103**

Applicant respectfully requests the reconsideration and withdrawal of the rejection of claims 6-22 under 35 U.S.C. §103 as allegedly being rendered obvious by Vatter. The

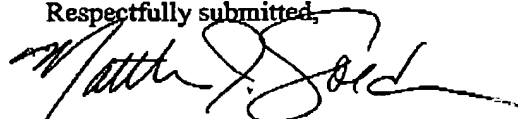
examiner contends that although Vatter does not specifically teach a combination of the instant sunscreens and instant porous silica particles, it would allegedly have been obvious to one of ordinary skill in the art at the time the invention was made to look to guidance provide by Vatter and utilize the instant combination of silica particles and organic sunscreens, particularly the instant sunscreens.

In response, applicant reiterates the remarks from above and notes that the claimed invention utilizes porous silica microspheres that have been pretreated with water or with the aqueous component of the emulsion or added to the emulsion as part of the aqueous component. In contrast, as detailed above, the silica of the compositions disclosed in Vatter is added to the oil phase of the emulsions disclosed therein before the oil phase is combined with the water phase or added after the emulsion composition is formed. Vatter does not teach or suggest the claimed invention and, in fact, teaches against the claimed invention. Accordingly, Vatter does not render obvious the claimed invention under 35 U.S.C. §103 and therefore applicant respectfully requests that the rejection of claims 6-22 be reconsidered and removed.

**CONCLUSION**

In summary, applicant maintains that the subject application is now in condition for allowance and a Notice of Allowance is therefore respectfully requested. If the undersigned can be of assistance in advancing the application to allowance, the examiner is invited to contact the undersigned at the number set forth below.

Respectfully submitted,



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